

**Notice of Allowability**

Application No.

09/930,352

Examiner

Nelson Yang

Applicant(s)

CUNNINGHAM.ET AL.

Art Unit

1641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to request for continued examination filed December 1, 2004.
2. ☒ The allowed claim(s) is/are 1-19, 59-69, 71-74, 100, 101, 110-125 and 129-146.
3. ☒ The drawings filed on 11 March 2002 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
  1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 12/04, 3/05
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),  
Paper No./Mail Date 3/18/05, 3/21/05
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendment of claims 1, 51, 110, 129 is acknowledged and has been entered.
2. Applicant's cancellation of claim 12 is acknowledged and has been entered.

### ***Rejections Withdrawn***

3. Applicant's arguments, see p.29, filed December 1, 2004, with respect to the rejections under 35 U.S.C. 102(e) as being anticipated by Budach et al [US 6,707,561] and under 35 U.S.C. 103(a) as being unpatentable over Budach et al [US 6,146,593] in view of Linnecke et al [US 4,240,751], of Siminovitch [US 6,128,431], of Walt et al [US 6,200,737], of Svetkoff et al [US 5,768,461], Rudigier et al [US 5,738,825], and of Pinkel et al [US 6,146,593] have been fully considered and are persuasive. The rejection of claims has been withdrawn.
4. Applicant's arguments, see p. 28, with respect to the rejection of claim 51 under 35 U.S.C. 112, second paragraph, have been fully considered and are persuasive. The rejection of claim of 51 under 35 U.S.C. 112, second paragraph, has been withdrawn.

### ***Information Disclosure Statement***

5. The patent applications submitted in the IDS filed December 01, 2004, have been considered but have not been entered, as they are not publicly available. Should applicant wish to have these applications entered, they may wish to submit the corresponding PG publication numbers.

## **EXAMINER'S AMENDMENT**

Art Unit: 1641

6. Authorization for this examiner's amendment was given in a telephone interview with Lisa Hillman on March 18, 2005.

7. The application has been amended as follows:

Please cancel claims 20-58, 70, 75-99, 102-109, 126-128, 147-152.

***Allowable Subject Matter***

8. The following is an examiner's statement of reasons for allowance:

In particular, the prior art fails to teach a two-dimensional grating, with one or more specific binding substances are bound to their binding partners and wherein one or more specific binding substances and their binding partners are detection label-free. It should also be noted that while the gratings of Budach et al are technically two-dimensional, they would not be considered two-dimensional gratings by one of ordinary skill in the art, as they would only produce a one-dimensional resonant grating effect.

9. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Conclusion***

10. Claims 1-19, 59-69, 71-74, 100-101, 110-125, 129-146, renumbered 1-70 are allowed.

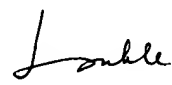
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nelson Yang whose telephone number is (571) 272-0826. The examiner can normally be reached on 8:30-5:00.

Art Unit: 1641

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long V. Le can be reached on (571)272-0823. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nelson Yang  
Patent Examiner  
Art Unit 1641

  
LONG V. LE  
SUPERVISORY PATENT EXAMINER  
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03/21/05